IN THE NORTHERN DISTRICT OF ILLINOIS
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS, LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., SCHAMBERGER BROS., INC. and BURKE BEVERAGE, INC. Plaintiffs, vs. AMTEC INTERNATIONAL OF NY CORP., a New York corporation, EUROPEAN BEER IMPORTERS, INC., an Illinois corporation and ADVANCED BRANDS & IMPORTING CO., INC., a Delaware corporation d/b/a STAR BRAND IMPORTS, Defendants.	08 C 1269 Hon. Joan H. Lefkow

AMENDED COMPLAINT

GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., SCHAMBERGER BROS., INC., and BURKE BEVERAGE, INC., for their Amended Complaint against the defendants, AMTEC INTERNATIONAL OF NY CORP., a New York corporation, EUROPEAN BEER IMPORTERS, INC., an Illinois corporation and ADVANCED BRANDS & IMPORTING CO., INC., a Delaware corporation d/b/a STAR BRAND IMPORTS, state as follows:

NATURE OF THE ACTION

1. This is an action to enjoin the wrongful termination of current, successful wholesale distribution relationships between the Plaintiffs and the Defendants. For some

time, the Plaintiffs have had the exclusive rights of distributorship of a Polish manufactured beer - Zywiec Beer - in Cook County and the greater Chicagoland area; Will County, Lake County, DuPage County Kane County, Kankakee County, Kendall County, Cook County, among others. Those rights have recently been effectively and wrongfully terminated by the conduct of one or more of the Defendants.

2. The recent attempted, effective termination of the Plaintiffs' wholesale distributorships violates the Illinois Beer Industry Fair Dealing Act (815 ILCS 720/1, *et seq*; the "Act") which controls the relationship among the parties. Under the Act, all agreements between brewers, master distributors and beer wholesalers can be terminated only for good cause, with the wholesaler having an opportunity to cure.

3. In the absence of a permanent injunction, the Plaintiffs will be irreparably harmed. The Plaintiffs have exclusively distributed the subject beer in the greater Chicagoland area for several years, and have built the market for the product through their marketing and distribution efforts and investments.

4. Sales of the subject beer represent significant portions of Plaintiffs' respective net profits from beer sales, and it is likely that one or more of the Plaintiffs may not remain in business absent the entry of the requested injunctive relief.

THE PLAINTIFFS

5. Plaintiff Grant Importing & Distributing Co., Inc. ("Grant") is an Illinois corporation and citizen, located in Broadview, Illinois.

6. Plaintiff Hayes Beer Distributing Company ("Hayes") is an Illinois corporation and citizen, located in Alsip, Illinois.

7. Plaintiff L&V Distributors, Inc. ("L&V") is an Illinois corporation and citizen, located in Crystal Lake, Illinois.

8. Plaintiff, Chicago Beverage Systems LLC ("CBS") is a Delaware limited liability company and citizen located in Chicago, Illinois. It is a single member LLC. Its sole

member is Reyes Holdings, LLC, a Delaware limited liability company and a citizen of Delaware.

9. Plaintiff Joseph Mullarkey Distributors, Inc. ("Mullarkey") is an Illinois corporation and citizen, located in Glenview, Illinois.

10. Plaintiff Town & Country Distributors, Inc. ("Town & Country") is an Illinois corporation and citizen, located in Itasca, Illinois.

11. Plaintiff Kozol Bros., Inc. ("Kozol") is an Illinois corporation and citizen, located in Joliet, Illinois.

12. Plaintiff Fred W. Losch Beverage Co. ("Losch") is an Illinois corporation and citizen, located in Lake Villa, Illinois.

13. Plaintiff Schamberger Bros., Inc., ("Schamberger") is an Illinois corporation and citizen, located in Villa Park, Illinois.

14. Plaintiff Burke Beverage, Inc., ("Burke") is an Illinois corporation and citizen, located in McCook, Illinois.

15. Each of the Plaintiffs is a duly licensed Illinois distributor of malt beverages, and is a "Wholesaler" or "beer wholesaler" as defined by 815 ILCS 720/1.1(3).

THE DEFENDANTS

16. Defendant Advanced Brands & Importing Co., Inc., d/b/a Star Brand Imports ("Advanced Brands") is a Delaware corporation and citizen, doing business in Illinois as an importer of alcoholic beverages, including malt beverages. It maintains an office in Lombard, Illinois.

20. Defendant Amtec International of NY, Corp. ("Amtec") is a New York corporation and citizen, with an office in Illinois at 2690 Lake Street, Melrose Park, Illinois. Amtec is an importer of various products into the United States, including malt beverages.

21. European Beer Importers, Inc. ("EBI")is an Illinois corporation and citizen, with an office at the same location as Amtec in Melrose Park, Illinois. It is believed that EBI is owned or controlled by Amtec.

22. It is further believed that Amtec or EBI have recently been granted exclusive rights to import and distribute Zywiec Beer in the United States. Zywiec Beer is brewed and manufactured in Poland, and has an active market in Illinois and elsewhere in the United States. See Exhibits A, B and C.

23. Since at least April 1, 2005, Advanced Brands was the exclusive importer of Zywiec Beer into the greater Chicagoland area, including Cook County, Kane County, Kankakee County, Kendall County, Will County, DuPage County, Lake County and other Illinois counties.

24. Advanced Brands is a "Brewer" and a "Master Distributor", as defined by 815 ILCS 720/1.1(4), (5), with respect to its distribution of Zywiec Beer.

25. Since on or about April 1, 2005 most of the Plaintiffs have had Agreements with Advanced Brands, as that term is defined in 815 ILCS 720/1,1(2), whereby the Plaintiffs were granted rights to be exclusive wholesalers of Zywiec Beer in the respective geographic territory of each. All of the Plaintiffs have been supplied with Zywiec Beer directly by Advanced Brands under those Agreements.

26. Many of the Plaintiffs were required, as part of their respective Agreements with Advanced Brands, to pay substantial monetary consideration to either Advanced Brands or to prior beer wholesalers for their distribution rights. For example, Plaintiff Grant paid Advanced Brands approximately $350,000.00 for its wholesale rights in its territory.

27. In addition, the Plaintiffs have expended substantial capital, staffing, training, marketing efforts and related resources in popularizing distribution of Zywiec Beer, and have created substantial good will in that brand throughout their respective territories.

28. In the recent past the Plaintiffs have depleted their inventories of Zywiec Beer through sales, and have repeatedly attempted to re-order the product through Advanced Brands. However, Advanced Brands has been unwilling or unable to supply Zywiec Beer to the Plaintiffs, advising them that the manufacturer has refused to ship further product to Advanced Brands for distribution in Illinois and the United States. Apparently, Advanced Brands has recently been advised that its rights of exclusivity as to importing Zywiec Beer have terminated. See Exhibit D.

29. By reason of Amtec's and EBI's apparent designations as exclusive distributors of Zywiec Beer into the United States, and by reason of Amtec and EBI's succession to Advanced Brands' distribution rights in that regard, Amtec and EBI are "Successor Brewer"(s), as defined under 815 ILCS 720/1.1(6), and are thereby also "brewer"(s) and "Master Distributor"(s) under 815 ILCS 720/1.1(4), (5).

30. The Plaintiffs have attempted to discuss their Agreements, rights and concerns regarding their ongoing distribution of Zywiec Beer with Amtec and with EBI, but Amtec and EBI have failed and refused to enter into any discussion. Despite diligent inquiry, the Plaintiff's have not been provided with any definitive information as to the status and involvement of Advanced Brands in these recent events or as to the reason or the claimed basis for the purported termination of any of its import rights.

31. Despite numerous requests from the Plaintiffs, Amtec and EBI have failed and refused to assure the Plaintiffs that their Agreements as exclusive beer wholesalers of Zywiec Beer in their respective territories would be honored. Without explanation, Amtec and EBI have refused to distribute any product to the Plaintiffs.

32. Amtec, EBI or Advanced Brands's failures and refusals to supply Zywiec Beer to the Plaintiffs amounts to an attempted, effective termination of each of the Plaintiffs' Agreements. See Exhibit A, page 2 and Exhibit C in particular, regarding the fact that EBI is actively involved in the acts alleged in this Amended Complaint and that it is by definition under the Act a Successor brewer, brewer and Master Distributor, and a necessary and indispensable party to any full resolution of matters here in dispute.

33. None of Amtec, EBI or Advanced Brands have provided any notice or reason for the attempted, effective termination of the Agreements, nor have any of them provided any of the Plaintiffs with the required opportunity to cure any purported cause for termination, as required under 815 ILCS 720/3, 720/4. The attempted, effective terminations of the Agreements are without good cause.

THE ILLINOIS BEER INDUSTRY FAIR DEALING ACT

34. Illinois enacted the Beer Industry Fair Dealing Act, codified at 815 ILCS 720, *et seq*. The Act governs the relationship between the Plaintiffs (as beer wholesalers, as such term is defined in the Act), and Advanced Brands, Amtec and EBI. Each of the Defendants is a Master Distributor, Brewer and Successor Brewer as defined under the provisions of the Act.

35. Pursuant to section 2(B) of the Act, all of the terms and requirements of the Act are "incorporated into and shall be deemed a part of every agreement between brewers and wholesalers and shall govern all relations between brewers and their wholesalers. . .".

36. Pursuant to section 3 of the Act, no brewer may cancel, fail to renew, or otherwise terminate an agreement without proper notice. Such notice of cancellation must be in writing and sent by certified mail and shall contain, *inter alia,* "a complete statement of the reasons therefore, including all data and documentation necessary to fully apprise the wholesaler of the reasons for the action".

37. Under section 4 of the Act, a brewer cannot terminate, cancel or fail to renew an agreement without good cause, and (i) has made a good-faith effort to resolve the disagreements; (ii) has furnished notice under section 3; and (iii) has provided the wholesaler a 90-day period to cure the stated reasons for the termination.

38. Good cause exists under the Act if the wholesaler "has failed to comply with essential and reasonable requirements imposed upon the wholesaler", which requirements may not be inconsistent with the Act. No cause exists for termination of any Plaintiff.

39. Pursuant to section 9 of the Act, a party affected by a violation of the Act has the right to maintain a civil action in a State or Federal court of competent jurisdiction located in Illinois. In any such action challenging a cancellation, termination or failure to renew, the brewer bears the burden of providing good cause.

40. The Act, at sections 7 and 9(5), grants the prevailing party in any action, compensation, damages, costs, and discretionary attorneys' fees.

41. Section 4 of the Act prohibits a brewer, (as that term is defined under the Act to include master distributor and successor brewer) from failing to renew or in otherwise terminating an agreement absent good cause and good-faith efforts to resolve disagreements, and without prior notification to the affected party.

42. Advanced Brands, Amtec and EBIs' attempted, effective cancellation or termination of the Plaintiffs' wholesale distribution rights to Zywiec Beer are in violation of the provisions of, *inter alia*, sections 3, 4, 5 and 7 of the Act.

43. The Plaintiffs have been advised that Zywiec Beer being is currently being shipped to Chicago, and intended for sale, use and distribution by Amtec and EBI in the greater Chicagoland area.

44. The Plaintiffs will suffer irreparable harm if Advanced Brands, Amtec and EBI are not temporarily and permanently enjoined from receiving and distributing Zywiec beer upon its arrival in Chicago.

45. If Advanced Brands, Amtec and EBI are not enjoined from taking possession of and distributing such shipments, the Plaintiffs' respective businesses will be irreparably harmed.

46. Many of Plaintiffs' employees may lose their jobs if Plaintiffs suffer the loss of their wholesaling rights to Zywiec Beer; their capital investments, training, marketing efforts and the like, will be destroyed.

47. The loss of the Zywiec Beer brand which they have created locally, will cause Plaintiffs immeasurable loss of goodwill and reputation in their respective wholesale markets, and will likely have an overall effect their distribution and sale of other malt beverage products.

48. The Plaintiffs have no adequate remedy at law.

Count I - Declaratory Relief

1.-48. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 48 above.

49. The Defendants have violated the Illinois Beer Industry Fair Dealing Act in, *inter alia*:

> (a) attempting to terminate or cancel the parties' Agreements without proper notice and an opportunity to cure, in violation of section 3, 4, 5 and 7.
>
> (b) attempting to terminate or cancel or materially alter the Agreements without good cause, in violation of sections 3 and 4 of the Act.

50. By reason of the Defendants' violations of the Act, the Plaintiffs are entitled to a declaration pursuant to section 9(2) of the Act: (i) declaring the attempted, effective termination or cancellation of the Plaintiffs' distribution agreements null and void; (ii) declaring that the Defendants are in violation of the provisions of the Act; and (iii) declaring that Illinois law governs the relationship between the parties as reflected in the provisions of the Act.

WHEREFORE, Plaintiffs, GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., and SCHAMBERGER BROS., INC., respectfully request judgment as follows:

(a) declaring that the attempted, effective termination or cancellation of the Plaintiffs' distribution Agreements are null and void;

(b) declaring that Advanced Brands, Amtec and EBI are in violation of the provisions of the Act;

(c) declaring that Illinois law governs the relationship between the parties as reflected in the provisions of the Act;

(d) awarding the Plaintiffs their costs and attorney fees; and

(e) awarding all other and further relief that the Court determines to be warranted, under the Act and as a matter of law.

Count II-Injunctive Relief

1.-48. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 48 above.

49. By reason of the Defendants' numerous violations of the Act, the Plaintiffs are entitled to a temporary restraining order under section 9(3) of the Act, enjoining Advanced Brands, Amtec and EBI and their agents from implementing or taking any steps in furtherance of the distribution of any Zywiec Beer product arriving in Chicago, until such time as the Court may hold a hearing to determine the Plaintiffs' right to permanently enjoin the Defendants from any further violations of the Act.

WHEREFORE, Plaintiffs, GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., and SCHAMBERGER BROS., INC., respectfully request judgment as follows:

(a) granting both a temporary restraining order and a permanent injunction, enjoining Advanced Brands, Amtec and EBI and their agents from implementing or taking any steps in furtherance of their attempted termination of the Plaintiffs' distribution rights, and enjoining any further and other violations of the Act;

(b) awarding the Plaintiffs their costs and attorney fees; and

(c) awarding all other and further relief that the Court determines to be warranted, under the Act and as a matter of law.

Count III-Damages

1.-47. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 47 above.

48. By reason of the foregoing violations of the Act, including but not limited to the provisions of section 7, the Plaintiffs have been damaged in an amount to be determined at trial, but not less than the amount of $50,000.00 per Plaintiff.

WHEREFORE, Plaintiffs, GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., and SCHAMBERGER BROS., INC., respectfully request judgment as follows:

(a) awarding Plaintiffs damages against Defendants Advanced Brands, Amtec and EBI in an amount to be determined at trial, but not less than the amount of Fifty Thousand Dollars ($50,000.00) per Plaintiff;

(b) awarding the Plaintiffs their costs and attorney fees; and

(c) awarding all other and further relief that the Court determines to be warranted, under the Act and as a matter of law.

Count IV-Unjust Enrichment and Misappropriation of Goodwill

1.-47. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 47 above.

48. As a result of the Plaintiffs' efforts, each has developed substantial goodwill relating to the Zywiec Beer brand in the territories where the Plaintiffs distributed the product.

49. The intangible assets of each of the Plaintiffs includes significant goodwill.

50. By terminating or canceling Plaintiffs' exclusive distribution rights, Advanced Brands, Amtec and EBI have attempted to illegally and impermissibly appropriate for themselves the Plaintiffs' goodwill, without compensation.

51. Advanced Brands, Amtec and EBI have misappropriated the property rights and goodwill of the Plaintiffs that in equity and good conscience they should not be permitted to retain without compensation.

52. By reason of the foregoing, Advanced Brands, Amtec and EBI will be unjustly enriched in an amount to be determined at trial, but not less than the amount of $50,000.00 per Plaintiff.

WHEREFORE, Plaintiffs, GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., and SCHAMBERGER BROS., INC., respectfully request judgment as follows:

(a) awarding damages against Defendants Advanced Brands, Amtec and EBI in an amount to be determined at trial, but not less than the amount of Fifty Thousand Dollars ($50,000.00) per Plaintiff, plus interest;

(b) awarding the Plaintiffs their costs and attorney fees; and

(c) awarding all other and further relief that the Court determines to be warranted, under the Act and as a matter of law.

Count V-Breach of the Covenant of Good Faith and Fair Dealing

1.-47. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 47 above.

48. Advanced Brands, Amtec and EBI breached the covenant of good faith and fair dealing contained in every Plaintiff Agreement, *inter alia*: by attempting to effectively terminate the Plaintiffs without just cause and without proper notice; by improperly eliminating Plaintiffs' territories; by refusing to fill orders for the Plaintiffs; and by inducing the Plaintiffs to create substantial goodwill and value in Zywiec Beer, and by then misappropriating those assets without compensation.

49. By reason of the Defendants' breach of the covenant of good faith and fair dealing, each of the Plaintiffs has been damaged in an amount to be determined at trial, but not less than the amount of $50,000.00 per Plaintiff.

WHEREFORE, Plaintiffs, GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., and SCHAMBERGER BROS., INC., respectfully request judgment as follows:

(a) awarding damages against Defendants Advanced Brands, Amtec and EBI in an amount to be determined at trial, but not less than the amount of Fifty Thousand Dollars ($50,000.00) per Plaintiff, plus interest;

(b) awarding the Plaintiffs their costs and attorney fees; and

(c) awarding all other and further relief that the Court determines to be warranted, under the Act and as a matter of law.

Count VI-Unjust Enrichment; Misappropriation of Intellectual Property Rights

1.-47. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 47 above.

48. The goodwill established by the Plaintiffs in their territories through the investment of time and money by Plaintiffs over a period of years, in effect creating the market for Zywiec Beer, has made Plaintiffs' intellectual property rights - consisting of the distribution rights to Zywiec Beer in their territories - extremely valuable.

49. As the owners and creators of these intellectual property rights, the Plaintiffs are exclusively entitled to the unrestricted, unencumbered use, enjoyment and value of such rights.

50. As the owners and creators of these intellectual property rights, the Plaintiffs are entitled to compensation for the infringement or misappropriation of such rights.

51. By refusing to supply Zywiec Beer to the Plaintiffs and by attempting to directly distribute Zywiec Beer in the Plaintiffs' territories, Advanced Brands, Amtec and EBI have misappropriated the Plaintiffs' intellectual property rights.

52. By reason of the foregoing, the Plaintiffs have been damaged in an amount to be determined at trial, but not less than the amount of $50,000.00 per Plaintiff.

WHEREFORE, Plaintiffs, GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., and SCHAMBERGER BROS., INC., respectfully request judgment as follows:

(a) awarding damages against Defendants Advanced Brands, Amtec and EBI in an amount to be determined at trial, but not less than the amount of Fifty Thousand Dollars ($50,000.00) per Plaintiff, plus interest;

(b) awarding the Plaintiffs their costs and attorney fees; and

(c) awarding all other and further relief that the Court determines to be warranted, under the Act and as a matter of law.

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